Nos. 10-238 and 10-239

In The Supreme Court of the United States

ARIZONA FREE ENTERPRISE CLUB'S FREEDOM CLUB PAC, *et al.*,

Petitioners,

v.

KEN BENNETT, *et al.*,

Respondents.

JOHN MCCOMISH, *et al.*,

Petitioners,

v.

KEN BENNETT, *et al.*,

Respondents.

On Writs Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF *AMICUS CURIAE* CENTER FOR GOVERNMENTAL STUDIES IN SUPPORT OF RESPONDENTS

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INTEREST OF THE *AMICUS CURIAE*[1]

The Center for Governmental Studies (CGS) is a non-profit organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. CGS' mission is to help civic organizations, decision-makers and the media strengthen democracy and improve governmental processes by providing rigorous research, non-partisan analysis, strategic consulting and innovative models of public information and civic engagement.

CGS is uniquely situated to present this brief. CGS has studied campaign finance laws, with a specific focus on public campaign financing, for over twenty-seven years. Since 1983, CGS has researched, analyzed and assessed the practical impacts of public campaign financing programs in twenty-three states and sixteen local jurisdictions throughout the nation. *See, e.g.*, CENTER FOR GOVERNMENTAL STUDIES, STATE PUBLIC FINANCING CHARTS (2009) and CENTER FOR GOVERNMENTAL STUDIES, LOCAL PUBLIC FINANCING CHARTS (2009). CGS has published its research in dozens of reports[2] and drafted several model campaign financing

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[1] This brief is filed with the written consent of all parties. No counsel for a party authored this brief in whole or in part, and no counsel or party funded its preparation or submission.

[2] *See* MOLLY MILLIGAN, CENTER FOR GOVERNMENTAL STUDIES, PUBLIC CAMPAIGN FINANCING IN ALBUQUERQUE: CITIZENS WIN WITH CLEAN MONEY ELECTIONS (2011) [hereinafter MILLIGAN, CITIZENS WIN]; HILARY RAU, CENTER FOR GOVERNMENTAL STUDIES, PUBLIC CAMPAIGN FINANCING PORTLAND: SHOULD "VOTER-OWNED ELECTIONS" SURVIVE? (2010); JESSICA LEVINSON, CENTER FOR GOVERNMENTAL

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STUDIES, CAMPAIGN FINANCING IN NORTH CAROLINA JUDICIARY: BALANCING THE SCALES (2009) [hereinafter LEVINSON, BALANCING THE SCALES]; JESSICA LEVINSON, CENTER FOR GOVERNMENTAL STUDIES, PUBLIC CAMPAIGN FINANCING IN FLORIDA: A PROGRAM SOURS (2008) [hereinafter LEVINSON, A PROGRAM SOURS]; STEVEN M. LEVIN, CENTER FOR GOVERNMENTAL STUDIES, PUBLIC CAMPAIGN FINANCING: WISCONSIN – SHOWING ITS AGE (2008) [hereinafter LEVIN, WISCONSIN]; JESSICA LEVINSON, CENTER FOR GOVERNMENTAL STUDIES, PUBLIC CAMPAIGN FINANCING: NEW JERSEY GOVERNOR – WEEDING OUT BIG MONEY IN THE GARDEN STATE (2008) [hereinafter LEVINSON, NEW JERSEY GOVERNOR]; JESSICA LEVINSON, CENTER FOR GOVERNMENTAL STUDIES, PUBLIC CAMPAIGN FINANCING: NEW JERSEY LEGISLATURE – A PILOT PROJECT TAKES OFF (2008) [hereinafter LEVINSON, NEW JERSEY LEGISLATURE]; ANNA N. MEYER, CENTER FOR GOVERNMENTAL STUDIES, PUBLIC CAMPAIGN FINANCING: MINNESOTA – DAMMING BIG MONEY IN THE LAND OF 10,000 LAKES (2008); SASHA HORWITZ, CENTER FOR GOVERNMENTAL STUDIES, PUBLIC CAMPAIGN FINANCING: MICHIGAN – DRIVING TOWARDS COLLAPSE? (2008); STEVEN M. LEVIN, CENTER FOR GOVERNMENTAL STUDIES, KEEPING IT CLEAN: PUBLIC FINANCING IN AMERICAN ELECTIONS (2006) [hereinafter LEVIN, KEEPING IT CLEAN]; PAUL RYAN, CENTER FOR GOVERNMENTAL STUDIES, POLITICAL REFORM THAT WORKS: PUBLIC CAMPAIGN FINANCING BLOOMS IN TUCSON (2003) [hereinafter RYAN, PUBLIC CAMPAIGN FINANCING BLOOMS IN TUCSON]; PAUL RYAN, CENTER FOR GOVERNMENTAL STUDIES, A STATUTE OF LIBERTY: HOW NEW YORK CITY'S CAMPAIGN FINANCE LAW IS CHANGING THE FACE OF LOCAL ELECTIONS (2003) [hereinafter RYAN, A STATUTE OF LIBERTY]; PAUL RYAN, CENTER FOR GOVERNMENTAL STUDIES, DEAD ON ARRIVAL? BREATHING LIFE INTO SUFFOLK COUNTY'S NEW CAMPAIGN FINANCE REFORMS (2003) [hereinafter RYAN, DEAD ON ARRIVAL]; PAUL RYAN, CENTER FOR GOVERNMENTAL STUDIES, ON THE BRINK OF CLEAN: LAUNCHING SAN FRANCISCO'S NEW CAMPAIGN FINANCE REFORMS (2002) [hereinafter RYAN, ON THE BRINK OF CLEAN]; and PAUL RYAN, CENTER FOR GOVERNMENTAL STUDIES, LOS ANGELES: ELEVEN YEARS OF REFORM: MANY SUCCESSES, MORE TO BE DONE (2001) [hereinafter RYAN, ELEVEN YEARS OF REFORM]. All publications by the Center for Governmental Studies are available online at http://publications.cgs.org.

laws.[3] CGS publishes an annually updated online chart of state and local public financing laws and provisions,[4] as well as an online map of jurisdictions with public campaign financing laws.[5] Based on its research, CGS has concluded that public campaign financing laws promote public dialogue and involvement in the electoral process.

The present case concerns the constitutionality of Arizona's public campaign financing law, and specifically the "trigger" clause in that law that provides additional matching funds under certain circumstances. Therefore, this case directly implicates the campaign finance interests and activities of the *amicus*. This brief is meant only to elucidate the

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[3] *See* MOLLY MILLIGAN, CENTER FOR GOVERNMENTAL STUDIES, LOOPHOLES, TRICKS AND END RUNS: EVASIONS OF CAMPAIGN FINANCE LAWS AND A MODEL LAW TO BLOCK THEM (2009); ROBERT M. STERN & MOLLY MILLIGAN, CENTER FOR GOVERNMENTAL STUDIES, MODEL LAW ON PAYMENTS INFLUENCING CANDIDATES AND ELECTED OFFICIALS (2008).

[4] CENTER FOR GOVERNMENTAL STUDIES, STATE PUBLIC FINANCING CHARTS (2009); CENTER FOR GOVERNMENTAL STUDIES, LOCAL PUBLIC FINANCING CHARTS (2009); CENTER FOR GOVERNMENTAL STUDIES, STATE PUBLIC FINANCING CHARTS (2007); CENTER FOR GOVERNMENTAL STUDIES, LOCAL PUBLIC FINANCING CHARTS (2007); CENTER FOR GOVERNMENTAL STUDIES, PUBLIC FINANCING LAWS IN LOCAL JURISDICTIONS – SUMMARY CHART (2005); and CENTER FOR GOVERNMENTAL STUDIES, STATE PUBLIC CAMPAIGN FINANCING LAWS – SUMMARY CHARTS (2005).

[5] CENTER FOR GOVERNMENTAL STUDIES, MAPPING PUBLIC FINANCING IN AMERICAN ELECTIONS (2009) and CENTER FOR GOVERNMENTAL STUDIES, MAPPING PUBLIC FINANCING IN AMERICAN ELECTIONS (2007).

practical benefits of public campaign financing laws in general. This *amicus* brief offers facts and arguments not likely to be advanced in either Party's filings, in an effort to assist the Court in its analysis and decision.

SUMMARY OF ARGUMENT

For three and a half decades, this Court has recognized the fundamental importance of public campaign financing programs to this nation's democracy. *Buckley v. Valeo*, 424 U.S. 1 (1976). Far from failing to serve the important governmental goals articulated in *Buckley*, as argued by *amicus* Center for Competitive Politics ("CCP"), voluntary public financing programs on every level of government directly serve those interests by: lessening the negative effects of private campaign contributions; promoting and enlarging public debate and participation in electoral processes; and reducing the burden of private fundraising. The claim of CCP that there is a "lack of evidence that [public campaign financing] laws benefit the political system or reduce corruption" (Brief of *Amicus Curiae* Center for Competitive Politics in Support of Petitioners, *McComish v. Bennett*, Nos. 10-238 and 10-239, at 2 ("CCP *Amicus*")) flies in the face of substantial evidence to the contrary.[6]

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[6] CCP attempts to justify this sweeping claim based on a cursory discussion of only three jurisdictions: Arizona, Maine, and New Jersey. CCP fails to address the significant body of

(Continued on following page)

The purpose of this *amicus* brief is to highlight for the Court the constitutional, beneficial impacts that voluntary public campaign financing programs have had throughout the nation. This brief explains why public campaign financing laws with and without matching funds provisions have a significant history of serving governmental interests long found to be important by this Court.

ARGUMENT

Introduction

More than thirty years ago, this Court in *Buckley* upheld the constitutionality of public campaign financing programs. *Buckley* remains the Court's only thorough examination of the constitutionality of such programs.[7] In *Buckley*, this Court correctly identified important governmental interests served by voluntary public campaign financing programs.

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evidence regarding the positive effects of the public financing programs in these three jurisdictions or the dozens of other jurisdictions that have implemented public financing programs over the last forty years. CGS, on the other hand, bases its conclusions on over twenty-seven years of experience studying public campaign financing programs in thirty-nine jurisdictions.

[7] In 1980, this Court summarily affirmed an en banc decision of the Second Circuit upholding the constitutionality of the presidential public campaign financing program in *Republican National Committee v. FEC*, 487 F. Supp. 280 (S.D.N.Y. 1979) (three-judge court), 616 F.2d 1 (2d Cir.) (en banc) aff'd mem., 445 U.S. 955 (1980).

Over more than three decades, dozens of states and localities have followed the *Buckley* holding by enacting voluntary public campaign financing programs. Studies, academic research, and actual candidate experience demonstrate that voluntary public campaign financing programs serve the important governmental interests identified in *Buckley*: they reduce the deleterious impact of large campaign contributions on the political process; promote speech by facilitating discussions about candidate campaigns; increase public participation in the electoral process; and reduce the burdens of private fundraising.

I. This Court Has Found that Public Campaign Financing Programs Serve Vital Governmental Interests

In the Court's seminal decision in the area of campaign finance reform, this Court unequivocally upheld a series of statutes that created a voluntary public campaign financing program for Presidential election campaigns. *Buckley*, 424 U.S. at 85. The public campaign financing program at issue in *Buckley* provided taxpayer funds for party nominating conventions, as well as for primary and general election candidate campaigns. *Id.*

Buckley remains this Court's only thorough analysis of the constitutionality of public campaign financing programs. The Court emphatically stated that "Congress enacted [presidential public campaign financing] in furtherance of sufficiently important

governmental interests. . . ." *Id.* at 95. *Buckley* held that the voluntary Presidential public campaign financing program was "a congressional effort, not to abridge, restrict, or censor, but rather to *use public money to facilitate and enlarge public discussion and participation in the electoral process,* goals vital to a self-governing people." *Id.* at 92-93 (emphasis added). It concluded that the program "furthers, not abridges, pertinent First Amendment values." *Id.* at 93.

The *Buckley* Court noted that in enacting voluntary public campaign financing, "Congress was legislating for the 'general welfare' to reduce the deleterious influence of large contributions on our political process, to facilitate communication by candidates with the electorate, and to free candidates from the rigors of fundraising."[8] *Id.* at 91. In the jurisdictions where these programs have been enacted, these principles have guided legislators and citizens, who have ratified voluntary public campaign financing programs with their votes.

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[8] This Court found that public campaign financing was a proper mechanism for reducing the burden on candidates that comes "from the rigors of soliciting private contributions." *Buckley,* 424 U.S. at 96.

II. Studies Demonstrate that Public Campaign Financing Programs Serve the Important Governmental Interests Recognized by this Court

Relying on this Court's decision in *Buckley*, dozens of jurisdictions have enacted voluntary public campaign financing programs. *See* CENTER FOR GOVERNMENTAL STUDIES, STATE PUBLIC FINANCING CHARTS (2009) and CENTER FOR GOVERNMENTAL STUDIES, LOCAL PUBLIC FINANCING CHARTS (2009). CGS has extensively studied and published detailed reports on the public campaign financing programs in many of these jurisdictions.[9] The evidence presented by CGS demonstrates that, in practice, these programs do serve the interests identified in *Buckley* as furthering the values of the First Amendment.

There are two types of public campaign financing programs: full public campaign financing programs (a.k.a. "clean money" programs) and partial public campaign financing programs. In both types of programs, candidates first qualify by raising a small number of initial qualifying contributions from private

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[9] *See* MILLIGAN, CITIZENS WIN, *supra* note 2; RAU, *supra* note 2; LEVINSON, BALANCING THE SCALES, *supra* note 2; LEVINSON, A PROGRAM SOURS, *supra* note 2; LEVIN, WISCONSIN, *supra* note 2; LEVINSON, NEW JERSEY GOVERNOR, *supra* note 2; LEVINSON, NEW JERSEY LEGISLATURE, *supra* note 2; MEYER, *supra* note 2; HORWITZ, *supra* note 2; RYAN, PUBLIC CAMPAIGN FINANCING BLOOMS IN TUCSON, *supra* note 2; RYAN, A STATUTE OF LIBERTY, *supra* note 2; RYAN, DEAD ON ARRIVAL?, *supra* note 2; RYAN, ON THE BRINK OF CLEAN, *supra* note 2; and RYAN, ELEVEN YEARS OF REFORM, *supra* note 2.

donors. In full public campaign financing programs, qualifying candidates then receive a lump sum of public funds to run their campaigns. In partial public campaign financing programs, qualifying candidates receive a match of public funds for the subsequent private contributions they raise. The ratio of that match varies by the jurisdiction. In both full and partial public campaign financing systems, the jurisdiction may provide participating candidates with additional funds based on expenditures by opponents or independent groups.

Amicus CCP claims that there is an "absence of any evidence" regarding the benefits of public campaign financing laws (CCP *Amicus* at 4), ignoring dozens of CGS reports and other academic research that demonstrate such programs do in fact serve important governmental interests. These studies, based on actual electoral experience over more than three decades, provide clear evidence that public campaign financing programs at all levels of government promote each of the important government interests specifically identified by this Court in *Buckley*. First, public campaign financing reduces the deleterious effects of large campaign contributions. Second, public campaign financing promotes and increases public discussion. Third, public campaign financing promotes public participation in elections. Fourth, public campaign financing frees candidates from the considerable burden of private fundraising. This *amicus* brief discusses each of these important governmental

interests and demonstrates how each is specifically served by public campaign financing.

A. Public Campaign Financing Reduces the Deleterious Influence of Large Contributions

Amicus CCP fails to credit evidence that public campaign financing systems reduce reliance on private contributions and increase the importance of small-dollar donors, thus providing a realistic alternative to the corrupting potential of large private contributions. Ciara Torres-Spelliscy and Ari Weisbard, *What Albany Could Learn from New York City: A Model of Meaningful Campaign Finance Reform in Action*, 1 ALB. GOV'T L. REV. 194, 243 (2008). "Only public funding can eliminate the special access afforded large donors by those who rely upon them for political survival." Theodore Lazarus, *The Maine Clean Election Act: Cleansing Public Institutions of Private Money*, 34 COLUM. J.L. & SOC. PROBS. 79, 128 (2000). Candidates and members of the electorate have both stated that public campaign financing programs can reduce the potentially corrupting influence of money on the political process, and that the programs have indeed reduced the pernicious influence of private campaign money on politics, notwithstanding the conclusory claims of CCP to the contrary. CCP *Amicus* at 2, 5.

In New Jersey, for instance, Assemblywoman Amy H. Handlin stated that without the public campaign financing program, "[s]ome politicians would go

back to trading favors and votes in the never-ending pursuit of campaign cash," and that the result would be that "ordinary voters would be marginalized again." LEVINSON, NEW JERSEY LEGISLATURE, *supra* note 2, at 17. Similarly, former New Jersey State Senator William Schluter stated that with public campaign financing, contributors are forced to influence politicians with their arguments, not their checks, and that New Jersey's system of public campaign financing was "a giant step in changing the stigma that New Jersey's political landscape has a 'For Sale' sign on it." *Id.*

In Los Angeles, Councilmember Jan Perry reported that the city's public campaign financing "reduced [her] need to appeal to a particular special interest group." Perry further stated that the public campaign financing program allowed her to rely more on individual donations that came "without the special interest strings." RYAN, ELEVEN YEARS OF REFORM, *supra* note 2, at 22.

In Maine, the public campaign financing program contributed to a decrease in the "aggregate levels of direct-to-candidate private contributions, one of the most powerful avenues of monetary influence in the political system." Jason B. Frasco, *Full Public Funding: An Effective and Legally Viable Model for Campaign Finance Reform in the States*, 92 CORNELL L. REV. 733, 746 (2007). Overall, the public campaign financing program "helped reduce Maine's elected officials' dependence on large campaign donors, resulting in a more effective and unencumbered democracy." *Id.*

Stated another way, "[b]y reducing the influence of large contributions, [Maine's] Act reduces the increasingly disproportionate influence of those able to make such contributions and is thus more consistent with the 'one person, one vote' ideal." Lazarus, *supra*, at 79.

In 2002, North Carolina adopted a system of full public campaign financing for Court of Appeals and Supreme Court candidates. The enactment of North Carolina's law was motivated by a fear that private contributions to judicial candidates would threaten the integrity and independence of the judiciary – a fear that this Court specifically recognized as a legitimate government concern in *Caperton v. A.T. Massey Coal Co., Inc.*, 129 S.Ct. 2252 (2009). North Carolina's program reduced the influence of private contributions by making it unlawful for publicly funded candidates to raise more than 35 percent of their campaign funds in private contributions.[10] LEVINSON, BALANCING THE SCALES, *supra* note 2, at 26.

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[10] Notably, North Carolina's law contains a trigger similar to the one at issue in this case. That trigger provision was upheld by the Fourth Circuit in *North Carolina Right to Life v. Leake*, 523 F.3d 274 (4th Cir. 2008), *certiorari denied sub nom. Duke v. Leake*, 129 S.Ct. 490 (2008).

B. Public Campaign Financing Promotes First Amendment Values by Facilitating Public Discussion about Elections

Additionally ignored by *amicus* CCP is the extent to which voluntary public campaign financing promotes, facilitates and enlarges public discussion about the electoral process. Communication between candidates and the electorate, and public discussion of elections generally, is enhanced in jurisdictions that have enacted these programs. This Court has described the goal of enhancing public discussion about the elections as "vital to a self-governing people." *Buckley*, 424 U.S. 92-93. The evidence demonstrates that this goal is met in many jurisdictions after voluntary public campaign financing programs have been adopted. These are precisely the values the First Amendment was designed to protect.

1. Public Campaign Financing Programs Promote Communication between Candidates and the Electorate

Once candidates qualify for public campaign financing, the public funds they receive either free them from having to raise additional funds altogether (in full public campaign financing systems) or supplement the funds they raise from private contributors (in partial public campaign financing systems). Under either system, participating candidates consistently report that public campaign financing enables them to spend less time fundraising and more time directly interacting with all of their constituents, not

merely the narrow band of individuals (inside and outside of the district) who can provide significant financial support.

CGS research shows that the 1985 partial public campaign financing program enacted in Tucson, Arizona, for instance, facilitated increased contact and discourse with the electorate. RYAN, CAMPAIGN FINANCING BLOOMS IN TUCSON, *supra* note 2, at 14-16. Kathleen Detrick, former City Clerk of Tucson, stated that "[Candidates] find that they [have to] go out there pounding the streets and talking to people about issues in order to get them to [give a small-dollar qualifying contribution]." *Id.* at 15. Echoing that sentiment, Councilman Steve Leal reported that the program "forces the candidate to have to talk to a whole lot more people." *Id.*

Candidates also reported increased discussion with members of the electorate in New Jersey, which experimented with a full public campaign financing program in selected legislative districts for general elections in 2005 and 2007. Former New Jersey State Assemblyman Bill Baroni, who ran as a publicly financed candidate, said the program was "the single best thing [he had ever] participated in in politics." LEVINSON, NEW JERSEY LEGISLATURE, *supra* note 2, at 17. Baroni highlighted that public campaign financing gave him the freedom to interact fully with voters. *Id.* at 17. Assemblywoman Amy H. Handlin, who participated in the 2005 program, echoed Baroni's

sentiment, saying that the program put an emphasis on face-to-face contact. *Id.* at 19-20.[11]

The public campaign financing program in Portland, Oregon is yet another example of a program that facilitated candidate communication with the electorate. In 2006, the Portland City Council decided to experiment with a full public campaign financing program for candidates for citywide office. In 2008, all six candidates who participated in Portland's Campaign Finance Fund reported that their participation increased their opportunities to communicate directly with voters. CITIZEN CAMPAIGN COMMISSION, SECOND BIENNIAL REPORT TO THE CITY COUNCIL AND CITIZENS OF PORTLAND (2009) [hereinafter SECOND BIENNIAL REPORT] at 16-17. Commissioner Amanda Fritz, for instance, told the Portland Citizens Campaign Commission, "Because I didn't have to dial for dollars, I had more time to try to meet as many Portlanders as possible." *Id.* at 16. City Council candidate Jeff

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[11] Despite (or perhaps ignoring) this evidence, CCP explicitly cites New Jersey's pilot program as a failure. CCP *Amicus* at 6-7. CCP's incorrect assertions about New Jersey's program have been rebutted by Yale Professor Don Green, who served as an expert witness for Respondent. Professor Green, who has spent decades studying American politics and the election system in particular, has testified that the two studies cited by CCP in their Ninth Circuit Court of Appeals *Amicus* Brief were "fundamentally flawed and cannot support the purported conclusions." Declaration of Donald Green in Support of Defendant-Intervenor Clean Elections Institute, Inc.'s Opposition to Plaintiffs' and Plaintiff-Intervenors' Motion for Summary Judgment, *McComish v. Bennett*, No. 08-1550, (9th Cir. July 17, 2009).

Bissonette reported that the process of gathering small qualifying contributions led to "some pretty serious conversations [with voters]." Bissonette emphasized that, because of the public campaign financing program, his communication with voters "[was not] about the money. It was about the issues. It was about the policies and the politics." *Id.* at 17.[12]

CGS also found that the public campaign financing program in Albuquerque, New Mexico, increased interaction between participating candidates and the electorate. Matt Brix, Policy Director of the Center for Civic Policy, noted that in the 2009 city election, Albuquerque's second election with public campaign financing, "[t]he campaign consisted more of retail politics – meet and greets, mailers, town hall meetings with groups of voters, radio spots." MILLIGAN, CITIZENS WIN, *supra* note 2, at 26. Councilor M. Debbie O'Malley, an incumbent who ran as a publicly funded candidate in 2007, echoed that sentiment, stating that with public funding, "you do a lot more outreach and the voters have a lot more ownership of the election process, because many of them have given $5 to help get a candidate qualified." *Id.* at 23.

[12] The Portland City Council adopted a public campaign financing program in 2005 on a short-term basis; it was scheduled to sunset in 2010. In 2010, during the midst of the recession, Portland voters narrowly declined to renew the program.

2. Public Campaign Financing Programs Promote Public Discussion and Awareness of Political Campaigns

In addition to increasing the discourse between candidates and the electorate, public campaign financing programs facilitate and enlarge public discussion more generally by increasing public discussion and awareness of electoral campaigns and specific candidates.

According to a 2007 poll by the Eagleton Institute of Politics, voters in districts in New Jersey that offered public campaign financing received more information about the elections from a greater variety of sources, including campaign literature, radio and television ads, and news articles than voters statewide.[13] PETER WOOLLEY AND TIM VERCELLOTTI, RUTGERS EAGLETON INSTITUTE OF POLITICS, PUBLIC ATTITUDES TOWARD THE CLEAN ELECTIONS INITIATIVE: MONITORING STUDY OF THE 2007 NEW JERSEY CLEAN ELECTIONS PILOT PROJECT (2007) at 17-21. Seventy percent of voters in "clean elections districts" reported that they

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[13] The Eagleton Institute poll found that among likely voters in New Jersey "clean elections" districts, 82 percent received campaign materials in the mail, 55 percent received information about legislative races from radio or television advertisements, and 74 percent received information about the legislative races from news articles. Among likely voters statewide, 49 percent received campaign materials in the mail, 43 percent received information from radio or television ads, and 56 percent received information from news articles.

had heard either "quite a lot" or "some" about the legislative races in their districts compared with only 37 percent of voters statewide. *Id.*

CGS found similar results in Portland. City Council candidate Jim Middaugh explained that "[public campaign financing] generated a lot of conversation in the community . . . [T]here isn't anything else in our civic fabric that gets people talking to one another about City issues." SECOND BIENNIAL REPORT, *supra*, at 17.

Some public campaign financing programs also help foster a larger discussion about elections and candidates by requiring candidates to debate each other as a condition for accepting public funding.[14] Debates give voters additional opportunities to learn about their local candidates' political views and qualifications.

C. Public Campaign Financing Facilitates and Enlarges Public Participation in the Electoral Process

Public campaign financing programs help to increase public participation in two other fundamental ways. First, public campaign financing promotes citizen involvement in political campaigns by increasing

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[14] The public financing programs in Arizona, New Jersey, Austin, Los Angeles, New Haven, New York City, and San Francisco, for example, include provisions for candidate debates.

the number and diversity of contributors. Second, public campaign financing increases the number and diversity of candidates who seek public office. This impact has been repeatedly shown in various studies that *amicus* CCP does not – because it cannot – rebut.

1. Public Campaign Financing Encourages More Citizens to Get Involved in Political Campaigns

Giving campaign contributions is one way for members of the electorate to get involved in the electoral process. In localities and states with public campaign financing programs, there has typically been an increase in the number and diversity of small donations by candidates' constituents.

For instance, Arizona adopted public campaign financing in 2000, and the number of contributors to Arizona gubernatorial campaigns more than tripled from 1998 to 2002. LEVIN, KEEPING IT CLEAN, *supra* note 2, at 11. New York City's public campaign financing program, in existence since 1988, has also encouraged new donors to become involved in political campaigns: in each of the last three city election cycles, over half of the individuals who contributed to city campaigns were first-time donors. NEW YORK CITY CAMPAIGN FINANCE BOARD, NEW YORKERS MAKE THEIR VOICE HEARD – A REPORT ON THE 2009 ELECTIONS (2009) at 104-105. After Portland implemented a public campaign financing program in 2005, participating candidates reported an increase in the number of

individuals who made donations to their campaigns. CITIZEN CAMPAIGN COMMISSION, FIRST REPORT TO THE CITY COUNCIL AND CITIZENS OF PORTLAND (2007) [hereinafter FIRST REPORT] at 19-20. Publicly funded candidate Chris Iverson described Portland's public campaign financing program as a "tool of inspiration to get people re-involved with politics," explaining that the implementation of public campaign financing brought "people into the political process . . . " *Id.* at 20-21.

Public campaign financing programs not only lead to an increase in the number of small campaign contributors, they also encourage political participation in the form of political donations across a more geographically diverse cross-section of the electorate. Publicly financed candidates in Portland's 2006 election, for example, relied on much broader and more geographically diverse donor bases than their privately funded opponents. Privately financed candidates received most of their donations from downtown Portland and a few other wealthy neighborhoods, while publicly financed candidates relied on donations from all different areas of the city. FIRST REPORT, *supra*, at 19-20.

New York City's public campaign financing program has had similar effects on the geographic distribution of campaign contributions. Historically, a majority of contributions to New York City campaigns have come from Manhattan donors, despite the fact that Manhattan residents make up less than a quarter of the city's total population. However, since New

York City implemented its partial public campaign financing program, it has seen a trend toward greater geographical balance. Between 2001 and 2009, Manhattan's share of contributions dropped from 68 percent to 53 percent. By contrast, Brooklyn's and Queens' combined share of contributions rose from 25 percent in 2001 to 43 percent in 2009. Donor activity increased almost six-fold in Flushing, a heavily Asian-American neighborhood that is home to Queens' Chinatown. NEW YORK CITY CAMPAIGN FINANCE BOARD, *supra*, at 109-110.

2. Public Campaign Financing Increases the Number and Diversity of Candidates Who Seek Office

Public campaign financing programs are also specifically designed to facilitate public participation in the electoral process by encouraging more individuals to run for public office, thus adding more speech to the public discourse. "Public funding encourages more candidates to seek public office by providing them with the necessary means to communicate their messages effectively." Lazarus, *supra*, at 79.

In Arizona, for instance, there was a 24 percent increase in the number of candidates participating in the primary when one compares the first full election after the implementation of public campaign financing with the last year prior to the implementation. Michael Clyburn, *Public Campaign Financing: The Path from Plutocracy to Pluralism*, 7 SEATTLE J.

FOR SOC. JUST. 285, 302 (2008), *citing* THE CLEAN ELECTIONS INSTITUTE, THE ROAD TO VICTORY: CLEAN ELECTIONS SHAPE 2002 ARIZONA ELECTIONS (2002). In New York City, the combination of making additional public funds available to run electoral campaigns and implementing term limits drew record numbers of candidates for city office in 2001. RYAN, A STATUTE OF LIBERTY, *supra* note 2, at 21. In Arizona, the public campaign financing system "encouraged some candidates who would not have otherwise run for office, particularly women, to run." Frasco, *supra*, at 758. In addition, a report by the U.S. General Accounting Office (now known as the Government Accountability Office) on the public campaign financing programs in Arizona and Maine found that 55 percent of participating candidates considered public campaign financing a "great" or "very great" factor in their decision to run for office in 2000. U.S. GAO, CAMPAIGN FINANCE REFORM: EARLY EXPERIENCES OF TWO STATES THAT OFFER FULL PUBLIC FUNDING FOR POLITICAL CANDIDATES (2003) at 4.

In addition to attracting a greater number of candidates, public campaign financing also encourages a broader, more representative range of candidates to seek public office. With the aid of public campaign financing, candidates who do not have an existing network of private contributors have an opportunity to effectively convey their message to members of the electorate. For example, Los Angeles City Councilmember Ed Reyes stated that the city's public campaign financing was crucial to his successful run for

office in 2001. RYAN, ELEVEN YEARS OF REFORM, *supra* note 2, at 23. "[As a first generation American,] I don't have the traditional ties to the power groups or the power structure. I literally came from the neighborhood. Without public financing, I knew that I wouldn't have been able to throw a stone like in the David and Goliath story. I probably would have been throwing a pebble. With public financing, I knew I had a shot." *Id.* Similarly, Portland Commissioner Amanda Fritz reported that the burden of fundraising would have dissuaded her from running for office in 2008 had public financing not been available. Fritz said, "I am not very good at asking for money . . . and I don't think that being good at asking for money should be a prerequisite for serving on the City Council." RAU, *supra* note 2, at 12.

According to a 2006 survey by the Maine Commission on Governmental Ethics and Election Practices, 87 percent of first-time candidates who participated in the state's public financing program reported that the availability of public funding was "very important to their decision to run for office." MAINE COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES, 2007 STUDY REPORT: HAS PUBLIC FUNDING IMPROVED MAINE ELECTIONS? (2007) at 1. Such evidence directly contradicts the contention that "government funding goes to candidates who have already shown political skill in the traditionally funded system." CCP *Amicus* at 8.

Public campaign financing programs also allow more female and minority candidates to competitively

run for office. In Arizona, the number of Native American and Latino candidates nearly tripled between 2000 and 2002 with the implementation of public campaign financing. RYAN, KEEPING IT CLEAN, *supra* note 2, at 7. Arizona's public campaign financing system also encouraged more women to run for office. Frasco, *supra*, at 758, *citing* MARC BRESLOW ET AL., MONEY & POLITICS IMPLEMENTATION PROJECT, REVITALIZING DEMOCRACY: CLEAN ELECTION REFORM SHOWS THE WAY FORWARD (2002) at 25. In New York City, minority representation on the City Council has increased steadily since public campaign financing was implemented in 1989. Torres-Spelliscy and Weisbard, *supra*, at 226. In 2001, the combination of increased public funding and term limits resulted in "an even more diverse group of candidates [for City Council] than has typically been seen in the city, including the emergence of new immigrant voices from the Asian-American and Russian-American communities, among others." LEVIN, KEEPING IT CLEAN, *supra* note 2, at 7. In 2009, New York voters for the first time elected a majority of minority candidates to the City Council. NEW YORK CITY CAMPAIGN FINANCE BOARD, *supra*, at 142. In Maine, 71 percent of female candidates who participated in the state's public campaign financing program said that the availability of public funding was "very important" to their decision to run for office. MAINE COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES, *supra*, at 1.

D. Public Campaign Financing Frees Candidates from the Rigors of Fundraising

"The 'money chase' is perhaps the most severe public harm inflicted by [our current] campaign finance regime. . . ." Lazarus, *supra*, at 128. "When candidates and elected officials spend the overwhelming majority of their time on fundraising activities, they inevitably spend the majority of their time addressing the concerns of donors." *Id.* at 129. Accordingly, state and local governments have an important government interest in freeing candidates from the rigors of fundraising.

Evidence from academic studies and CGS reports clearly shows that public campaign financing programs further an important governmental interest by freeing candidates from the burden of "dialing for dollars." "By freeing candidates from the time-consuming rigor of fundraising, any public campaign financing program will leave more time available for public campaign financing-funded candidates to debate the issues and interact with voters." Clyburn, *supra*, at 303. CCP, however, does not reference and gives no weight to the experiences of publicly funded candidates, even though actual candidate experiences provide ample evidence that public financing programs serve this important goal.

In Maine, for instance, as a result of its voluntary public campaign financing program, "candidates and elected officials report that they are now able to spend significantly more time reaching a larger number of

constituents instead of focusing on potential large donors." Frasco, *supra*, at 747; *see also* BRESLOW ET AL., *supra*, at 26; MAINE COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES, *supra*, at 1. Similarly, publicly financed candidates in Arizona spent more time with voters and less time fundraising. Clyburn, *supra*, at 313.

The same phenomenon occurred in Portland, Oregon. City Council candidate John Branam reported that "[voters] appreciated the fact that [public campaign financing] afforded me the opportunity to spend more time talking about the issues as compared to dialing for dollars." SECOND BIENNIAL REPORT, *supra*, at 16-17. City Council candidate Charles Lewis likewise stated that the public campaign financing program "allowed me to spend more time reaching out directly to voters and not to big money interests. I was able to spend the vast majority of my time meeting and talking with the people of Portland, not seeking large donations." *Id.*

CGS found that as a result of Albuquerque's 2005 public campaign financing law, candidates in that city sang the praises of a system that allowed them to spend more time meeting with all constituents, not just those who could give campaign contributions. Incumbent Councilor Isaac Benton commented that "there was a big difference [running as a participating candidate]. Not having to fundraise – I had more time to focus on the issues." MILLIGAN, CITIZENS WIN, *supra* note 2, at 32. Further, Councilor Dan Lewis, who successfully ran as a publicly funded challenger

in 2009, stated, "I like that the election was issue oriented and there was no added pressure of fund raising. . . . I was able to focus on the message and the issues rather than the fundraising." *Id.* at 32.

CGS research shows that voluntary public campaign financing helped to alleviate the burden of private fundraising in other jurisdictions, as well, including New York City and Tucson. RYAN, A STATUTE OF LIBERTY, *supra* note 2, at 20; RYAN, PUBLIC CAMPAIGN FINANCING BLOOMS IN TUCSON, *supra* note 2, at 19. As in other jurisdictions, the Tucson program allowed incumbents more time to legislate because less time was spent fundraising. *Id.*

CONCLUSION

The experience of the many jurisdictions that have implemented public campaign financing programs demonstrates that such programs further the values of the First Amendment. This powerful evidence supports the constitutionality of such programs, just as the Court found the program at issue in *Buckley* to be constitutional. For the foregoing reasons, we urge this Court to reaffirm the legislative purposes, importance and constitutionality of public campaign financing programs, and to affirm the holding of the Ninth Circuit Court of Appeals.

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